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APPENDIX

Relevant Docket Entries in the Supreme Court of Ohio

No. 72-389

May 22, 1972	Notice of Appeal, 1 copy
June 29, 1972	Order to certify Record sent Clerk of Courts
June 29, 1972	Cause docketed on its merits
July 11, 1972	Original paper filed
August 21, 1972	Appellant's Brief filed
September 14, 1972	Brief of Appellee filed
September 20, 1972	Brief of Appellee filed
May 23, 1973	Judgment affirmed
May 30, 1973	Original papers B.E. sent to Clerk
June 7, 1973	Mandate issued
June 7, 1973	Certified copy of Entry sent Clerk

Relevant Docket Entries in Court of Appeals of Ohio, Eighth District*

December 8, 1970	Notice of Appeal filed by Plaintiff-Appellant together with Precipe
December 11, 1970	Bill of Exceptions by Plaintiff filed and Notice issued
December 24, 1970	Bill of Exceptions received. Transmitted to Trial Judge
December 24, 1970	Bill of Exceptions received from Trial Judge
November 30, 1971	Judgment of the Common Pleas Court affirmed. Appellant excepts. Appellant to pay costs. Mandate to issue.

* The docket entries in the Court of Appeals were included on the docket sheet in the Court of Common Pleas.

Relevant Docket Entries in Court of Common Pleas

August 12, 1970	Complaint, motion for Temporary Injunction filed and Summons sent Certified Mail to Defendants
August 19, 1970	Return
August 31, 1970	Plaintiffs Affidavit filed
September 3, 1970	Plaintiffs Motion for T.R.O. merged with Complaint for Permanent Relief. Case advanced to 9-8-70. Answer to be filed by Defendant by 9-4-70
September 4, 1970	Answer of City of Shaker Heights and Paul K. Jones filed
September 4, 1970	Separate Answer of Metromedia, Inc. filed
September 17, 1970	Answer Brief of Shaker Heights & Jones Defendants filed
September 17, 1970	Brief of Defendant Metromedia, Inc. filed
December 1, 1970	Injunction denied, Petition is dismissed at Plaintiff's costs. Exceptions
December 8, 1970	Notice of Appeal filed by Plaintiff-Appellant, together with Precipe

Reference to Journal Entry of Court of Common Pleas

The Journal Entry of the Court of Common Pleas denying Plaintiff's request for a Temporary and Permanent Injunction against Defendants and dismissing the Petition is in the Appendix to the Petition for a Writ of Certiorari (which is attached to the Printed Petition) and is at Page 22a.*

* References in this appendix to the appendix attached to the petition for a writ of certiorari will hereafter be made as ____a. Cross-references to pages of this appendix and references to it in the brief will hereafter be made as _____A.

Reference to Journal Entry of Court of Appeals

The Journal Entry of the Court of Appeals of Ohio, Eighth District is printed in the Appendix to the Petition for a Writ of Certiorari at 19a-21a.

COMPLAINT

COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO

[Filed Aug. 12, 1970]

Case No. 885898

HARRY J. LEHMAN
Shaker Heights, Ohio

Plaintiff,

vs.

CITY OF SHAKER HEIGHTS, OHIO
Shaker Heights, Ohio

PAUL K. JONES
Director of Transportation
City of Shaker Heights, Ohio
Shaker Heights, Ohio

METROMEDIA, INC.
c/o C.T. Corporation
Statutory Agent
Cleveland, Ohio

Defendants.

1. Plaintiff is a resident, property owner and citizen of the City of Shaker Heights, a registered voter and candidate for the office of State Representative to the Ohio General Assembly for District 56, which includes the City of Shaker Heights.

2. Defendant City of Shaker Heights is a municipal corporation duly chartered and existing under the Constitution and laws of Ohio and is the owner and operator of the Shaker Heights Rapid Transit, and Paul K. Jones is the Director of Transportation of Defendant City of

Shaker Heights and the responsible officer for the Shaker Heights Rapid Transit.

3. Defendant Metromedia, Incorporated, by and through its Metro Transit Advertising Division, by written agreement with the Defendant City of Shaker Heights, is the exclusive agent and representative of the Defendant City of Shaker Heights, in the sale, placement and operation of all advertising space in and on the Shaker Heights Rapid Transit.

4. On or about July 3, 1970, Plaintiff sought to purchase advertising space on the Shaker Heights Rapid Transit for the months of August, September and October of 1970 from Defendant Metromedia, Inc., through its Metro Transit Advertising Division, for the purpose of advertising his political candidacy. Plaintiff was informed by the said Defendant that advertising space was available for the months of August, September and October of 1970, but that, under the terms of the agreement with Defendant City of Shaker Heights, Defendant Metromedia, Inc., could not accept, and refused to accept, any political advertising from Plaintiff for the Shaker Heights Rapid Transit.

5. On July 13, 1970, Plaintiff wrote to Paul Jones, Mayor, and Director of Transportation, of Defendant City of Shaker Heights requesting said Defendant to modify its policy of not accepting political advertising and to accept the advertising of Plaintiff, but that said Defendant refused to do so.

6. The absolute prohibition on political advertising in and on the municipally owned and operated transit system violates Plaintiff's rights of free speech under Sec. 11, Art. 1 of the Constitution of the State of Ohio and the First Amendment of the Constitution of the

United States, and his right of equal treatment and protection under the law under the Fourteenth Amendment of the Constitution of the United States.

7. Plaintiff has no adequate remedy by law, and unless restrained, the Defendants will continue to refuse to accept Plaintiff's political advertising.

WHEREFORE, Plaintiff prays for a declaratory judgment as to whether the constitutional rights of the Plaintiff under Sec. 11, Art. 1 of the Constitution of the State of Ohio, and the First and Fourteenth Amendments of the Constitution of the United States, have been violated and infringed upon by the refusal of the Defendants to accept the political advertising of Plaintiff on the Shaker Heights Rapid Transit; for a temporary and permanent injunction restraining the Defendants, their respective officials, agents and employees, from refusing to accept the political advertising of Plaintiff on the Shaker Heights Rapid Transit, and for such additional relief, legal and equitable as may be appropriate and just, for reasonable legal fees, and for its costs herein.

FALSGRAF, REIDY, SHOUP & AULT
By s/ HARRY J. LEHMAN
Harry J. Lehman
And /s DONALD L. GRONINGER
Donald L. Groninger
1050 Union Commerce Building
Cleveland, Ohio 44115
771-2345
Attorneys for Plaintiff

SEPARATE ANSWER OF DEFENDANT METROMEDIA, INC.

COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Case No. 885898

HARRY J. LEHMAN

Plaintiff,

v.

CITY OF SHAKER HEIGHTS, OHIO, ET AL.

Defendants.

Now comes defendant, Metromedia, Inc., and for its separate answer to the complaint of the plaintiff, states:

1. For lack of knowledge this defendant denies the allegations of paragraph 1.

2. This defendant admits the allegations of paragraph 2.

3. This defendant admits the allegations of paragraph 3.

4. This defendant admits the allegations of paragraph 4.

5. For lack of knowledge this defendant denies the allegations of paragraph 5.

6. This defendant denies the allegations of paragraph 6.

7. This defendant admits that it will continue to refuse to accept plaintiff's political advertising pursuant to paragraph 15 of the Agreement dated August 1, 1970, by and between defendant, City of Shaker Heights, and this defendant.

WHEREFORE, having fully answered, defendant, Metromedia, Inc., prays that plaintiff's complaint be

dismissed and that this defendant may go hence with its costs without day.

H. STEPHEN MADSEN
1956 Union Commerce Building
Cleveland, Ohio 44115
621-0200
Attorney for Defendant
Metromedia, Inc.

Of Counsel:
BAKER, HOSTETLER & PATTERSON
1956 Union Commerce Building
Cleveland, Ohio 44115
621-0200

CERTIFICATE OF SERVICE

A copy of the foregoing separate answer of defendant, Metromedia, Inc., was served upon Harry J. Lehman, plaintiff, 1050 Union Commerce Building, Cleveland, Ohio 44115 and Walter C. Kelley, attorney for defendants City of Shaker Heights, Ohio, and Paul K. Jones, National City Bank Building, Cleveland, Ohio, by United States mail, postage prepaid, this _____ day of September, 1970.

Attorney for Defendant
Metromedia, Inc.

ANSWER OF DEFENDANTS CITY OF SHAKER HEIGHTS, OHIO AND PAUL K. JONES

COUNTY OF CUYAHOGA
IN THE COURT OF COMMON PLEAS

Case No. 885898

HARRY J. LEHMAN,

Plaintiff,

vs.

CITY OF SHAKER HEIGHTS, et al.,

Defendants.

First Defense

1. These defendants admit the allegations contained in paragraphs 1, 2, 3, and 5 of the complaint.

2. Defendants admit that under the terms of the agreement with defendant City of Shaker Heights, it is agreed that defendant Metromedia, Inc. shall not place any political advertising on the city's rapid transit cars, but alleges that it is without knowledge or information sufficient to form a belief as to each and every other allegation of paragraph 4 of the complaint.

3. Defendants deny that the policy of defendant City of Shaker Heights prohibiting political advertising on a municipally owned transit system violates plaintiff's rights of free speech under Section 11, Article 1 of the Constitution of the State of Ohio or the first amendment of the Constitution of the United States, or his right of equal treatment and protection under the law under the fourteenth amendment of the Constitution of the United States.

4. Defendants deny each and every allegation in

plaintiff's complaint except those admitted to be true herein.

Second Defense

1. The complaint fails to state a claim against defendants upon which relief can be granted.

WHEREFORE, defendants City of Shaker Heights, and Paul K. Jones, having fully answered, request judgment that the complaint be dismissed with costs, charged to plaintiff.

WALTER C. KELLEY, JR. of
KELLEY AND MCCANN
1519 National City Bank Building
Cleveland, Ohio 44114—241-3141
Attorney for defendants
City of Shaker Heights, Ohio and
Paul K. Jones

SERVICE

Defendants served the foregoing Answer on Harry J. Lehman, Attorney for the Plaintiff, at 1050 Union Commerce Building, Cleveland, Ohio, and Baker, Hostetler and Patterson, Union Commerce Building, attorneys for defendant Metromedia, Inc. by mailing a copy to each of them on the 4th day of September, 1970.

WALTER C. KELLEY, JR.

PORTION OF TRANSCRIPT OF PROCEEDINGS

* * * [18]

THEREUPON the Plaintiff, HARRY J. LEHMAN, to maintain the issues on his part to be maintained, appeared as a witness in his own behalf, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zangerle:

Q. Would you please tell the Court your name? A. Harry J. Lehman, L-e-h-m-a-n.

Q. Mr. Lehman, what is your address? A. My residence address is 3295 Braemar Road, City of Shaker Heights, Ohio.

Q. What form of residence dwelling is that, Mr. Lehman? A. This is a single family residence. I live there with my wife and family.

Q. Are you an owner of this dwelling? A. Yes, my wife and I are record title owners to the property.

Q. Are you, therefore, a taxpayer? A. Yes, we pay real estate taxes to the City of Shaker Heights, School Board and other organizations.

Q. What is your age, please? A. I am 35. [19]

Q. Are you a registered voter? A. I am a registered voter in Cuyahoga County, Ohio.

Q. Of what municipality? A. Well, I am registered from my residence in Shaker Heights.

Q. I see. And can you tell us what State of House Representatives District you are registered in? A. I reside in what is known as District 56, among 99 Districts in the State of Ohio.

District 56 consists of a number of municipalities. Shaker Heights, University Heights, Warrensville Heights, Beachwood, Pepper Pike, Hunting Valley, Chagrin Falls, Solon, Woodmere, Orange, Willow, Bentleyville and North Randall—perhaps one or two more. There are about 112,000 people reside in this district.

Q. Mr. Lehman, are you presently involved in any political activities? A. Yes, I am candidate for the office of State Representative in District 56.

Q. Is your candidacy opposed? A. Yes, I have an opponent.

Q. When will be the date of the election that will determine the results of this campaign? A. It is scheduled for Tuesday, November 3, 1970.

Q. What methods are you using to promote your candidacy? [20] A. We are using various methods, including newspaper advertising in the daily newspapers that service our community, and the weekly newspapers such as the Sun-Press and the Catholic Universe Bulletin, Jewish News, and University Heights Town Crier.

We plan to use direct mail advertising, postcards, and circulars of various types.

We do not presently contemplate use of radio or TV advertising because we just don't plan to use that.

We also were involved in direct contact with the prospective voters door to door, attendance at meetings, participation in panel discussions and various direct contacts with the residents of the Shaker Heights area and other communities in District 56.

Q. Mr. Lehman, are you doing any advertising on the mass transit? A. I have sought to purchase advertising space on the Shaker Heights Rapid Transit which comes right into my district, and as far as I am able to tell the vast majority of its six to eight thousand riders each day are residents of the district, City of Shaker Heights, and surrounding communities constitute the 56 House District.

I sought to purchase advertising by calling this Metrotransit Division, talking to Mr. Adams, who is present [21] today in Court, back early in — late in June or early in July of this year. I asked him if there was advertising space available for the period of August 15th through November 15th, and he advised me that there was.

I asked as to the rates for advertising and he informed me that the rates, I believe, without referring to my notes, were approximately $2.90 per card per car, and that the Shaker Heights Rapid Transit operated 55 cars, and that if you bought the advertising for a three-month period, the rate was somewhat less than $2.90 per car.

Then, of course, the advertiser has to supply the posters to go in the advertising space and those were, I was informed at the time, submitted to the Metrotransit Division for their review and approval.

I did seek to purchase advertising on behalf of my campaign committee and was informed at the time that Shaker Rapid Transit did not accept political advertising. I then wrote to Mayor Jones, of the City of Shaker Heights and asked him if the City would accept political advertising, and change the policy that Mr. Adams had explained to me existed.

Mr. Jones courteously replied in writing that the City was not prepared to change the policy.

MR. ZANGERLE: Mark these [22] Plaintiff's Exhibits 1 and 2.

(Plaintiff's Exhibits 1 and 2 were marked for identification.)

By Mr. Zangerle:

Q. Mr. Lehman, I believe you said you had had some correspondence between yourself and an official of Shaker Heights. I now hand you what has been marked for identification, Plaintiff's Exhibit 1, and I would like you to identify that to the Court. A. This is a copy of my letter dated July 13, 1970, addressed to Honorable Paul K. Jones, who was Mayor of Shaker Heights, which includes my request that the City change its policy of not accepting political advertising in the Shaker Heights Rapid Transit.

Q. Now, I will hand you what has been marked for identification by the court reporter as Plaintiff's Exhibit 2, and I would like you to identify that for the Court. A. This is a copy of the letter, reply letter from Mayor Paul K. Jones, to myself, dated July 22, 1970, responding to my letter of July 13, 1970.

MR. ZANGERLE: Mark this Plaintiff's Exhibit No. 3.

(Plaintiff's Exhibit 3 was marked for identification.)

[23]

By Mr. Zangerle:

Q. Mr. Lehman, did you at any time submit your advertising copy or program to the officials of Metromedia, or Metrotransit Advertising? A. Yes. I was advised by, I believe it was Mr. Hibbs of that company that all advertising, and particularly political advertising had to be reviewed by them as to content and design.

They submitted to me a set of rules and regulations that they publish governing the acceptance of political advertising and we had our artist prepare the poster that we wanted to have on the Shaker Heights Rapid Transit advertising space, and submitted it to them, to them being the Metromedia, and it was approved.

Q. Mr. Lehman, I hand you what has been marked for identification Plaintiff's Exhibit No. 3. Would you please identify that for the Court? A. Yes, this is the art work of the proposed advertising that we planned to, desired to run in the Shaker Heights Rapid Transit. It speaks for itself.

It was okayed by Thomas Hibbs, I believe his name is, and initials M. T. A., when we submitted it to him through the artist, Harry Levy, some two or three weeks ago.

Q. Now, are you aware that this was approved by the [24] officials of Metrotransit? A. It carries the signature

of the gentleman who was the General Manager of Metrotransit in this area.

MR. ZANGERLE: Your Honor, that will conclude our direct examination of Mr. Lehman.

THE COURT: Are you offering those as exhibits?

MR. ZANGERLE: Mr. Lehman will offer those at the conclusion of the testimony.

THE COURT: Mr. Kelley, do you care to cross-examine?

MR. KELLEY: No, I have no questions, your Honor.

THE COURT: Mr. Madsen?

MR. MADSEN: Your Honor, I have just a couple of questions.

Cross-Examination

By Mr. Madsen:

Q. Mr. Lehman, you did name your opponent as candidate for the State Legislature? A. My opponent is a gentleman by the name of Richard Hollington, who I believe is a lawyer with the firm of Baker, Hostetler and Patterson. **[25]**

Q. Do you know if he has made any effort to obtain the right to place political advertisements on the Shaker Rapid? A. No, sir, I do not have any knowledge of any kind as to what his political campaign is, or what he plans.

Q. You had mentioned various communities which are part of District 56. Do any of those communities, other than Shaker Heights, have any form of public transportation? A. Yes.

Q. Which are those, please? A. I believe the Cleveland Transit System services the City of University Heights, also services the City of Shaker Heights, services, I believe, the City of Warrensville Heights. Wheth-

er it goes to Solon or Chargin Falls, I just don't know, sir.

Q. Have you made any efforts to date to place political advertising upon the C.T.S. transportation system? A. At the time I talked with Mr. Adams, back in late June or early July—

Q. I don't believe that is responsive to my question. A. Yes, I believe it is, sir, if I may attempt to continue my answer. He advised me that C.T.S. did have political advertising available, and I did inquire as to its availability and as to the rates, and because of the manner in which advertising is accepted, political [26] advertising is accepted — or any advertising, as I understand — by C.T.S. we decided not to purchase advertising space with C.T.S. because of the cost.

Q. Isn't it true you were told C.T.S. does not accept local political advertising? A. No, sir, I have never at any time been informed that that is the case. The rules received pertaining to political advertising from Metromedia, have no reference to that either.

Q. Do you have a copy of those rules with you? A. Yes, I do.

Q. Would you produce those?

THE WITNESS: Mr. Zangerle, would you provide a copy?

By Mr. Madsen:

Q. When were you provided with the document Mr. Zangerle has just offered me? A. I cannot give you an exact date, but it was probably some time during the month of July. It could have been early in August. It was prior to the time of submission of the proposed advertising which is Exhibit 3.

Q. Was it given to you by Mr. Hibbs of Metrotransit Advertising? A. No, it was given to the artist who did the work [27] representing Exhibit 3, Harry Levy, of Market Advertising Agency.

It was given to him by Mr. Hibbs, and, in turn delivered to me by Mr. Levy.

Q. When was it delivered to you by Mr. Levy? A. About — again I cannot state exactly the date but I believe it was the end of July or early August.

Q. But it is your understanding that this document recites the policy with respect to the acceptance of political advertising on public transportation by Metrotransit Advertising? A. Yes, sir, and I spoke with Mr. Hibbs about it, and that was his representation he made to me.

MR. MADSEN: I will ask the reporter to mark the document handed to me by Mr. Zangerle as Defendant Metromedia's Exhibit A.

(Defendant Metromedia's Exhibit A was marked for identification.)

By Mr. Madsen:

Q. Handing you what has been identified as Metromedia's Exhibit A, would you read to the Court the last item thereon, which is number ten? A. Would you like me to identify it?

Q. Yes, if you would.

I thought you had already identified it. [28] A. I hadn't seen the document we were discussing.

This is the Metrotransit Advertising Copy Policy, which I did receive from Mr. Levy, from Mr. Hibbs to him, and specifically, Item 10:

"Political advertising will not be accepted on following systems: Shaker Rapid—Maple Heights—North Olmsted."

MR. MADSEN: No further questions.

By Mr. Kelley:

Q. You said you had never been told C.T.S. doesn't accept local political advertising. You do recall in Judge McMonagle's chambers, Mr. Madsen's inquiry of Mr. Hibbs, what the policy was and receiving the report that C.T.S. does not accept local political advertising? A. I recall the discussion at one time that C.T.S. did not accept local political advertising. Judge McMonagle stated a few years ago when he was a candidate for Judge, he sought to purchase advertising on C.T.S., and it was not accepted.

Q. Don't you recall that Mr. Madsen returned from speaking to Mr. Hibbs, with the report that C.T.S. does [29] not accept local political advertising now or at the time when Judge McMonagle was running for office? A. It was my understanding what the statement was, but—I certainly stand to be corrected—that that was the policy and is not presently the policy.

But I have some difficulty with the concept of what local political advertising is, because my wife reported that very day she saw a Judge Talty sign, which is a Common Pleas Judgeship, on a C.T.S. bus going through Shaker Heights that very day, which covers the same jurisdiction as Judge McMonagle.

MR. KELLEY: I object to the last part of that answer as not being responsive to the question.

THE COURT: Objection sustained.

Stricken.

Q. My question was, wasn't it reported back to Judge

McMonagle, by Mr. Madsen, after speaking to Mr. Hibbs, that the policy of C.T.S. was not to accept local political advertising, whatever the means? A. My understanding of Mr. Madsen's report was that that had been the policy. And my understanding was not at the time that currently is the policy, but, as I indicated, I stand to be corrected if we have someone— [30]

MR. MADSEN: Your Honor, I think perhaps a professional statement would be in order at this time because the question did arise in the hearing which was held in chambers before Judge McMonagle as to what the present policy of C.T.S. is, and the Judge—

THE COURT: We are on cross-examination of a witness. So as not to confuse the record, we can have the professional statement after cross-examination.

MR. MADSEN: All right. Thank you, your Honor.

MR. KELLEY: I have no further questions, your Honor.

THE COURT: Did you have any more cross-examination?

MR. MADSEN: Yes, your Honor.

As I say, the question arose at the time of the hearing on the temporary restraining order before Judge McMonagle, as to what the present policy of the C.T.S. System is.

Judge McMonagle expressed great surprise that there would be any advertising accepted, because he personally, in one of his campaigns, had sough to purchase such advertising and wasn't successful. [31]

THE COURT: I was calling on you if you had any further cross-examination?

MR. MADSEN: I have no further cross-examination.

THE COURT: Do you have any redirect?

MR. ZANGERLE: No, I don't.

I was just objecting.

THE COURT: Now, you may continue with what you were saying.

MR. MADSEN: In order to ascertain what the present policy was, Judge McMonagle asked if I could find out. Mr. Hibbs, who was then the local manager of Metromedia Advertising, was in the courtroom, because the hearing was being held in chambers with only counsel present.

I went out and asked Mr. Hibbs what the policy was, and he told me at that time that the present C.T.S. policy was that they would not accept political advertising, having anything to do with a local campaign.

I then returned to Judge McMonagle's chambers and made that statement in the presence of all counsel, including Mr. Lehman, namely, that [32] the policy of the C.T.S. is that they will not accept local political advertising.

THE COURT: I don't know what "local" means. C.T.S. is owned by the City of Cleveland, so it may be limited to within the City of Cleveland. I don't know what the word "local" means for a transit system which traverses various municipalities within the boundaries of Cuyahoga County.

Any further testimony?

MR. LEHMAN: Yes, your Honor, I believe in that Mr. Madsen has made a statement for the record, that I may, for purposes of the record, make at least two comments on that.

One is there was no hearing. There was a conference in Judge McMonagle's chambers with the lawyers, without the clients, in which it was agreed by the parties that the matters would be combined.

I don't know if you viewed it as a hearing, but I did not, sir.

THE COURT: I think he said that they were in chambers.

MR. LEHMAN: He said we had a hearing. [33]

THE COURT: And Judge McMonagle asked him to go out and obtain from somebody who wasn't in there—the parties to the lawsuit were not in chambers—asked him to go out and get some information. He went out and got it, and relayed it to Judge McMonagle.

MR. LEHMAN: I think the Court should be aware, so if the conversation between counsel and the Judge in chambers becomes an issue in this case, I think the Court should also be aware that—

THE COURT: I don't think it makes any difference what the C.T.S. policy is.

MR. LEHMAN: That was the next point I was going to make that the C.T.S. policy is not on issue before this Court.

THE COURT: It is a question of whether this policy of Shaker Heights is in violation of the constitution.

MR. LEHMAN: I do have one further witness, and would like to call Mr. Adams to the stand, please.

THE COURT: Is this for cross-examination under the statute?

MR. LEHMAN: Yes. [34]

THEREUPON the Plaintiff, further to maintain the issues on his part to be maintained, called as a witness for cross-examination under the statute LEONARD M. ADAMS, who, being first duly sworn, was examined and testified as follows:

Cross-Examination

By Mr. Lehman:

Q. May I have your name? A. Leonard M. Adams.

Q. And your place of residence? A. 10225 Chesterfield Drive, Parma Heights, 44130.

Q. Your place of employment, sir? A. Metromedia Transit, a Division of Metromedia.

Q. What is your position with that agency? A. Sales Manager.

Q. How long have you been with them? A. I have been with Metromedia since October of 1966.

Q. How long have you been with the Metrotransit Advertising Division in Cleveland? A. I have been selling Transit Advertising for ten years, under the original owners, who were Ryan & Batchelder.

Q. Does your company maintain offices in Cleveland? [35] A. Metromedia?

Q. Yes. A. Yes.

Q. Where are they located? A. 3134 Euclid Avenue.

Q. That is where your office is located? A. That is right.

Q. And your company is the exclusive agent for the sale of advertising space on the Shaker Heights Rapid Transit? A. That is right.

Q. Do you have with you, sir, permission pertaining to the availability of advertising space on the Shaker Heights Rapid Transit? A. I do.

Q. Could you tell me how many advertising positions there are on a Shaker Rapid Transit car? Inside the car? A. I would say approximately 20.

Q. Inside the car? A. Inside.

Q. Is there advertising space available on the outside of the cars well? A. Yes.

Q. Is it correct that there are approximately, or are 55 cars in service on the Shaker Heights Rapid Transit? [36] A. Yes.

Q. Is there space currently available for commercial advertising? A. Yes.

Q. For the month of September, 1970? A. Inside?

Q. Inside. A. Yes.

Q. For the month of October, 1970? A. Yes.

Q. For the first two weeks of November, 1970? A. Yes.

Q. Does Shaker Heights Rapid Transit accept advertising from cigarette companies? A. Yes.

Q. Does it accept advertising from banks, and savings and loans? A. Yes.

Q. Does it accept advertising from liquor companies? A. Yes.

Q. Does it accept it from various retail rug cleaning companies, or people selling retail goods or services? A. Yes.

Q. Is there any type of commercial advertising which it will not accept, so long as the copy or contents of the [37] ad is acceptable? A. Will you state that again?

MR. KELLEY: I don't understand the question, your Honor.

MR. LEHMAN: Would you read the question back to the witness? If it is not clear to you I will rephrase it.

(Question read by the reporter.)

THE WITNESS: Can I ask a question?

MR. LEHMAN: Yes.

THE COURT: Yes.

THE WITNESS: When you say "commercial advertising," are you referring to product sales?

Q. Yes. A. Only?

Q. Product or service? A. Or service. Are you referring to political advertising now?

Q. No, sir, non-political commercial advertising. Is there any group or class of product that is non-political

but is commercial, that the Transit System will not accept? A. No.

Q. I have observed, in riding the Shaker Heights [38] Rapid Transit, that there is church advertising on the Shaker Heights Rapid Transit. Is that paid advertising? A. Yes.

Q. I also observe there are numerous, what might be called civic or public oriented type of advertising such as The Peace Corps, Care, or charitable organizations, Muscular Dystrophy, something like that.

Now, is this paid advertisement by these agencies? A. With the exception of the "Smokey the Bear", if you will, or anything that pertains—that we could get space from, from the Government, this is put in for free, at no charge.

However, the other public service, your Muscular Dystrophy, your Boy Scouts, your Girl Scouts, PAL organization, Police Athletic League, those are put in by labor costs only, which the labor costs are redeemed by our head officers.

Q. So that is at a rate substantially less than your commercial advertisers? A. No charge at all, except for labor.

Q. And the labor has to do with placing the posters in the vehicle? A. That is correct.

Q. I hand you what has been previously marked for identification as Defendant Metromedia's Exhibit A, [39] and I ask you if that is currently the policy of the Metromedia pertaining to advertising? A. Yes.

Q. Would you read to the Court, paragraph 2 of this document? A. "Metrotransit Advertising will not accept any political copy that pictorially, graphically or otherwise states or suggests that proponents or opponents of

the persons or measure advertised are vulgar, greedy, immoral, monopolistic, illegal or unfair."

Q. I hand you what has been marked for identification Plaintiff's Exhibit 3, and ask you if you recognize this, and Mr. Hibbs' signature in the lower right-hand corner? A. I do.

Q. I trust that his signature means that insofar as the copy on that advertising is concerned, it passes muster? So far as the standards of your agency that you just read? A. Yes.

Q. Do the rates of $2.95 per month per card, on a monthly basis, and $2.80 per month per card on a three-month basis, still apply as of the current date, on Shaker Heights Rapid Transit? A. Yes. [40]

Q. These are for cards of 11 inches by 28 inches, I believe? A. Yes.

Q. That you have a larger card that is at a different rate? A. Yes.

MR. LEHMAN: I have no further questions of this witness, your Honor.

THE COURT: Any cross-examination?

MR. KELLEY: That was cross-examination.

THE COURT: That is right. He was called for cross-examination.

All right, you may step down.

(Witness excused.)

THE COURT: Anything further on behalf of the plaintiff?

MR. LEHMAN: No. At this time, I would like to offer in Evidence Plaintiff's Exhibits 1, 2 and 3.

THE COURT: Any objection?

MR. LEHMAN: And we have no objection to—I trust you will offer Defendant's [41] Exhibit A because we had

intended to have it marked and identified as part of Mr. Adams' examination.

MR. MADSEN: If you intend to offer it, you had better offer it.

MR. LEHMAN: I offer in evidence Defendant Metromedia's Exhibit A.

THE COURT: I never heard of that, but if you want to, mark it for yourself also. It seems to me the defendant has to offer its own exhibits.

MR. LEHMAN: That was my understanding, and that is why I turned to Mr. Madsen. Or I will recall Mr. Adams to the stand, or we can make this a Joint Exhibit.

THE COURT: Now, I am on Plaintiff's Exhibits 1, 2 and 3. And I am asking if opposing counsel have any objection to receiving any of those.

MR. KELLEY: Your Honor, I would object to Exhibit 3. I think the exact copy submitted by the plaintiff in this case is not at issue and it is not relevant to the issues in the case.

MR. MADSEN: We have no objection.

THE COURT: We will proceed. Particularly in light of the cross-examination, [**42**] in which Mr. Adams identified the signature or mark of Mr. Hibbs.

(Plaintiff's Exhibits 1, 2 and 3 were received in evidence.)

THE COURT: Now, Mr. Madsen, what about Defendant Metromedia's Exhibit A?

MR. MADSEN: We do not intend to offer it, your Honor.

MR. LEHMAN: Your Honor, may I recall Mr. Adams to the stand so this may be marked for identification?

THE COURT: You don't have to. You may have it marked for your exhibit, Plaintiff's Exhibit 4.

MR. LEHMAN: Would you mark this as Plaintiff's Exhibit 4, please?

(Plaintiff's Exhibit 4 was marked for identification.)

MR. LEHMAN: I am offering the entire Plaintiff's Exhibit 4.

THE COURT: Any Objection?

MR. KELLEY: Your Honor, at the moment, I am going to object and ask the Court to reserve judgment on this. **[43]**

THE COURT: Let me see Exhibit 4.

MR. KELLEY: I would like to bring out on further testimony, your Honor, that there is an incorrection on Exhibit A, and after I bring it out, I may have no objection to having it admitted.

THE COURT: All right. We will reserve on that.

Is the plaintiff resting?

MR. LEHMAN: Yes.

THE COURT: Any testimony on behalf of Shaker Heights?

MR. KELLEY: Yes, your Honor. I will call Mayor Jones to the stand.

[44]

DEFENDANT SHAKER HEIGHTS' CASE

THEREUPON the Defendant, The City of Shaker Heights, to maintain the issues on its part to be maintained, called as a witness PAUL K. JONES, who, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kelley:

Q. State your name, please? A. Paul K. Jones.

Q. Where do you live? A. 3333 Warrensville Center Road.

Q. City of Shaker Heights? A. In the City of Shaker Heights.

Q. Are you the defendant in this case, Mayor of the City of Shaker Heights? A. Yes.

Q. How long have you been Mayor of the City? A. Since 1962.

Q. And what was your employment or occupation prior to your service as Mayor to the City? A. I was employed as Director of Transportation, by the Mayor of Shaker Heights in September of 1944. Prior [45] to that I had been assistant general manager of the Rapid Transit since 1930.

Q. When you were employed in 1930, in connection with the operation of the Rapid Transit, was it then privately owned? A. It was privately owned, yes, sir.

Q. How long has it been a public facility? A. Since September 6th, 1944.

Q. Will you tell the Court what the policy of the transit system has been, as both a private facility and a public facility, since 1930, with respect to political advertising? A. The policy, to the best of our—

MR. LEHMAN: Excuse me, I would enter an objection only as to when it was a private system. I have no objection to his testimony as to the public system.

MR. KELLEY: For what it is worth, I would like the record to show what the policy has been since Mr. Jones has been connected with the system.

THE COURT: All right. Objection overruled.

THE WITNESS: It has been my recollection that the policy has been, all [46] these years, we never entertained any political advertising.

Q. What year did you say it became the property of Shaker Heights? A. September, 1944.

Q. Since that occurred, during the past 26 years of public operation, has it been the policy of the City of

Shaker Heights not to accept or permit political advertising on the Rapid Transit vehicles or other property? A. That has been the policy, yes.

Q. There has been introduced in evidence the present contract with the Metromedia, between the City of Shaker Heights and Metromedia, with respect to the exclusive agency for advertising.

Has that contract—does it now, and has it in the past, provided specifically that there would be no political advertising accepted? A. That is right. The present contract and those preceding that had that clause in, at least for two or three terms, I am sure.

Q. Prior to the time that it was expressly or specifically written into the contract, was it the oral understanding and the practice and policy of the City not to accept political advertising? [47] A. That is right.

Q. During that 26 year period has there been any objection or complaint with respect to the enforcement of this policy or practice?

MR. LEHMAN: Objection.

THE COURT: Objection sustained.

Q. Mayor Jones, will you tell the Court what the reason for the policy is, as far as the City's point of view is concerned, and your point of view as Mayor, if you will, what is the reason behind the administration and the counsel adopting and enforcing a policy of no political advertising on the Rapid Transit? A. Well, it has been our policy for, I say, all these years, for many reasons but principally because there are chances for abuse. You could be accused of discrimination, favoritism. If I may go back a few years, I am sure your Honor when Fred Kohler was Mayor of Cleveland and we had benches all over town and it said, "Kohler, your Mayor," and so forth.

Someone might want to take Rapid Transit and put poster all over. As I say, that is where the abuse comes in. So I say it has been our policy all these years to take no advertising and then there could be no problem of favoritism or discrimination and keep the property clean.

[48]

MR. KELLEY: Nothing further.

THE COURT: Any cross-examination?

Cross-Examination

By Mr. Lehman:

Q. I have just one question. This is the policy of the City of Shaker Heights that you have articulated, that there will be no political advertising. This is not a policy imposed on the City by an independent agency, is it? A. No. It is the policy of the City.

MR. LEHMAN: No further questions.

Redirect Examination

By Mr. Kelley:

Q. Mayor Jones, when you refer to the policy of the City is this a policy recommended by your Administration and adopted and enforced by your Administration, as a result of Council action? A. That is right. This has been my recommendation to the former Mayors and to our present Council and so forth. [49]

Q. Did the Council adopt that policy as part of the agreement with Metromedia? A. Yes, they did.

THE COURT: Does Metromedia have any questions?

MR. MADSEN: No, we do not.

THE COURT: Anything further?

MR. KELLEY: I would like to recall Mr. Adams to the stand for further questioning.

THE COURT: Is this for cross-examination or direct?

MR. KELLEY: Well, we will call it direct. It doesn't make much difference to me.

[50]

THEREUPON the Defendant, the City of Shaker Heights, further to maintain the issues on its part to be maintained, called as a witness LEONARD M. ADAMS, who, being previously duly sworn, was examined and testified further as follows:

Direct Examination

MR. KELLEY: Let the record show that Mr. Adams, who has previously testified has been called back to the stand.

By Mr. Kelley:

Q. Mr. Adams, you are presently the Sales Manager of Metromedia Transit in Cleveland? A. I am.

Q. How long have you held that position? A. I have been Sales Manager since last October of 1969.

Q. Who was Mr. Thomas K. Hibbs? A. Tom Hibbs—

Q. Or what position did he hold in Cleveland recently? A. Tom Hibbs was the General Vice-President and General Manager of the Cleveland Branch, Vice-President and General [51] Manager.

Q. Was he your immediate superior?. A. Yes.

Q. And has he now left Cleveland for another position with the company? A. Tom Hibbs left last Friday for San Francisco. He went back home as Sales Manager.

Q. If I tell you that as of August 14, 1970, in a letter to Mayor Jones from Mr. Hibbs, "Reference is made to the fact that Shaker Heights —"

MR. LEHMAN: I object.

MR. KELLEY: May I finish the question, your Honor?

MR. LEHMAN: Its premise is hearsay, "If I tell you in a letter from Mr. Hibbs to Mayor Jones" —

THE COURT: If it is hearsay, of course, it is objectionable.

MR. KELLEY: All right.

Mark this Defendant Shaker Heights Exhibit A.

(Defendant Shaker Heights' Exhibit A was marked for identification.)

By Mr. Kelley:

Q. Handing you what has been marked for identification [52] Defendant Shaker Heights' Exhibit A, does that distinctly advertise the policy of Metromedia? A. Yes.

Q. Does that appear to you to be similar, or the same copy as Plaintiff's Exhibit 4 and Defendant Metromedia's Exhibit A?

Just basically, does that generally appear to be the same thing? A. Yes.

Q. Now, you notice in the last line on the Defendant Shaker Heights' Exhibit A, the words "Euclid, Ohio," has been written in, among the list of public transportation systems for which political advertising is not accepted. Do you notice that? A. Yes.

Q. Is the inclusion of Euclid, Ohio, in that list a correct indication of the present policy enforced by your company with respect to the Euclid Transit System? A. Yes.

MR. KELLEY: On that basis, I would like to substitute Defendant Shaker Heights' Exhibit A, in place of Defendant Metromedia's Exhibit A, on the basis that the inclusion of Euclid, after the words Shaker Rapid, Maple Heights and North Olmsted, is a correct expression of the [53] political advertising policies in effect at the present time.

THE WITNESS: That is correct.

Q. Is that correct? A. That is correct.

THE COURT: All right. It may be received.

(Defendant Shaker Heights' Exhibit A was received in evidence.)

By Mr. Kelley:

Q. Mr. Adams, is it also correct that the Cleveland Transit System, while it permits State and National political advertising, does not accept advertising for local political candidates? A. That is right.

Q. Is that your understanding of the present policy of C. T. S.? A. Yes, that is correct.

Q. Is it your further understanding that other cities in the country, such as Detroit, and some other suburban systems throughout the country, enforce the same policy of not accepting political advertising on public transit systems? A. Yes. That is right.

MR. KELLEY: Nothing further, [54] your Honor.

Cross-Examination

By Mr. Lehman:

Q. Mr. Adams, what is a local office? A. Political?

Q. Yes. A. If you are referring to the Cleveland Transit System —

Q. Yes. A. — local political offices, as told to us, are the Mayors, Judges, Councilmen, County Commissioners. We accept on the Cleveland Transit System state level and up, political advertising. Issues, we accept issues.

Q. The State Assembly is a State office? State Senate is a State office? A. You are telling me this?

Q. If you are serving in Columbus, in a State office? A. Yes.

Q. I want to know under your advertising policy —

A. We accept that.

Q. You accept those.

Is it not true that Metromedia administers advertising sales programs on transit systems throughout the country? Is that correct? A. That we do administer?

Q. Yes. A. Yes, we do.

Q. You have contracts not only in Cuyahoga County, but you have contracts with municipally operated transit systems throughout this country? A. Yes.

Q. Your company is probably the largest in this field, is it not? A. Yes.

Q. Is it not true that in many of these communities the political advertising of every type, nature and description, so long as it meets the criteria you read earlier, is accepted? A. Yes.

Q. Is it not true that in each and every instance the policy as to whether any political advertising shall be accepted is a policy established by the owner of the Transit System? A. Yes.

Q. Is it not true that if you were permitted to sell political advertising, that Metromedia and the City of Shaker Heights would receive revenues from the sale of that advertising?

MR. KELLEY: Objection.

[56]

MR. MADSEN: Objection.

THE COURT: Objection sustained.

That is an ify thing.

Q. In the cities in which you do sell political advertising as distinguished from commercial advertising, does the owner of the Transit System receive money, payment for that advertising?

MR. KELLEY: Objection.

THE COURT: Overruled. You may answer. A. Yes.

Q. And the agency earns a commission on the sale of that advertising? A. Yes.

MR. LEHMAN: I have no further questions.

By Mr. Madsen:

Q. Mr. Adams, you were examined with respect to —

MR. LEHMAN: Your Honor, unless —

is this a joint defense?

MR. MADSEN: He was called on [57] direct, as I understood it, by Mr. Kelley and I have the right to cross-examine.

MR. LEHMAN: You are cross-examining your own client?

MR. MADSEN: For the purpose of clarification, I think I have the right to, sir.

MR. LEHMAN: All right. Just so the record so shows.

By Mr. Madsen:

Q. For purposes of clarification, Mr. Adams, handing you what has been marked for identification Defendant Shaker Heights Exhibit A, you testified, as I understand it, that that is the policy of Metrotransit Advertising. Is that correct? A. That is correct.

Q. Is that a policy which Metrotransit Advertising abides where it sells advertising on public conveyances? A. Yes.

MR. LEHMAN: I have nothing further.

THE COURT: Anything further on behalf of Shaker Heights?

MR. KELLEY: Nothing further.

[58]

THE COURT: Anything further on behalf of Metromedia?

MR. MADSEN: Nothing further.

THE COURT: Anything further on behalf of the plaintiff?

MR. LEHMAN: Yes, your Honor.

For matters of clarification we offered Plaintiff's Exhibit 4, which was identified by the plaintiff as that which he received from the defendant Metromedia setting forth their advertising policy. There since has been identified Defendant Shaker Heights Exhibit A, which is the same document, with the addition of the words typed on as distinguished from mimeographed or printed on, "Euclid, Ohio", under paragraph 10.

You didn't ask me what my view was at the time Mr. Kelley offered this into evidence. I have no objection to Defendant Shaker Heights Exhibit A, but I would think that both of them should be accepted into evidence. We are prepared to accept Mr. Adams testimony that the Euclid Municipal System has a policy similar to Shaker Heights, but I think for the purpose of the record they both should be made part of it, and therefore [59] we offer Plaintiff's Exhibit 4.

MR. KELLEY: I have no objection, your Honor. It is a small point. I simply wanted the record to show the correct facts.

THE COURT: I will receive it without objection.

(Plaintiff's Exhibit 4 was received in evidence.)

MR. LEHMAN: We have nothing further.

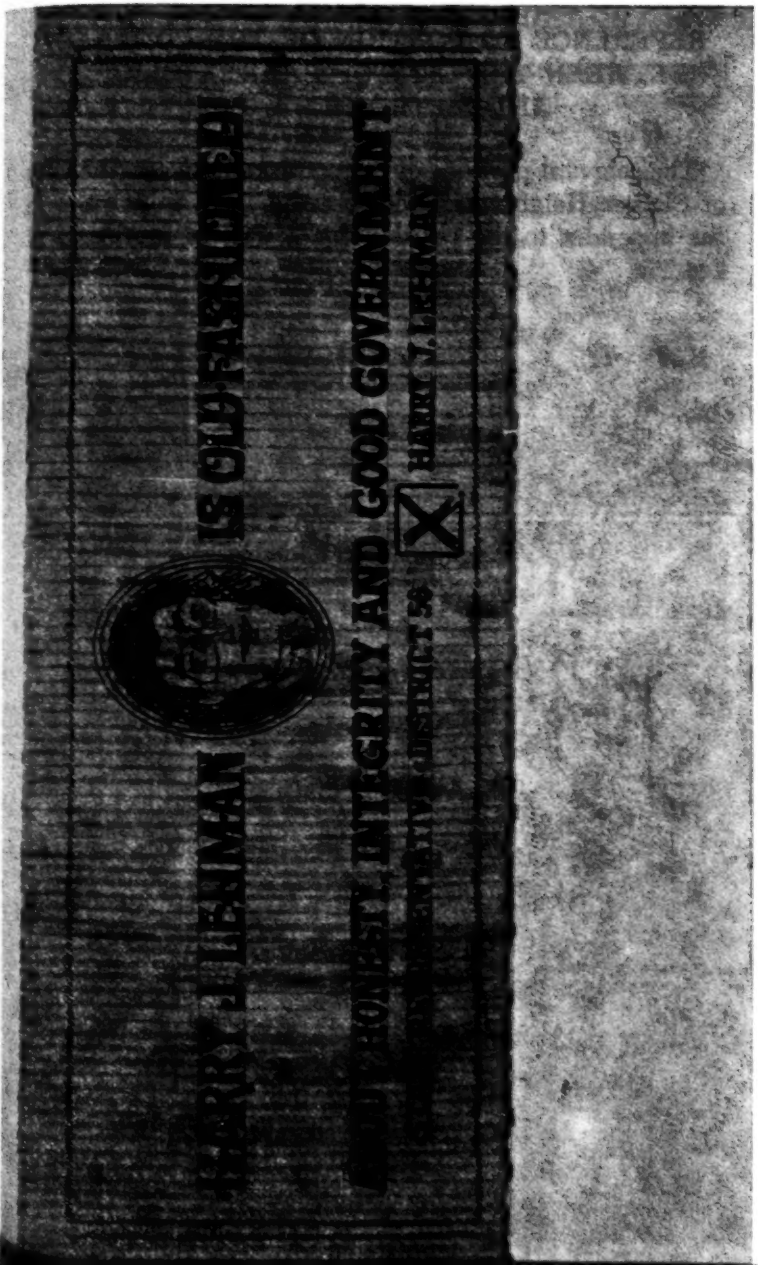
THE COURT: Does anyone want to argue, or will you submit it on briefs?

MR. KELLEY: I am perfectly willing to let the matter rest here and submit it on briefs, your Honor, and we will have our brief filed as soon as possible, not later than Thursday.

THE COURT: All right. Thank you, gentlemen.

(Hearing adjourned.)

Proposed Advertising Copy



REFERENCE TO PORTION OF THE CONTRACT BETWEEN THE CITY OF SHAKER HEIGHTS AND METROMEDIA, INC.

The relevant portions of the contract between the City of Shaker Heights and Metromedia, Inc., is printed in the appendix to the petition for a writ of certiorari at 24a-25a.

JUDGMENT OF THE SUPREME COURT OF OHIO

The judgment of the Supreme Court of Ohio is printed in the appendix to the petition for a writ of certiorari at 17a-18a.

OPINION OF THE SUPREME COURT OF OHIO

The opinion of the Supreme Court of Ohio is printed in the appendix to the petition for a writ of certiorari at 1a-16a. Justice Corrigan's opinion starts at 3a and Justice Stern's dissenting opinion begins at 7a.